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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,446	07/12/2004	NORMAN D. LEVINE	9215.4803	4445
22235 7590 08/22/2007 MALIN HALEY AND DIMAGGIO, PA 1936 S ANDREWS AVENUE FORT LAUDERDALE, FL 33316			EXAMINER HARMON, CHRISTOPHER R	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 08/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary

Application No.

10/710,446

Applicant(s)

LEVINE, NORMAN D.

Examiner

Christopher R. Harmon

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
 4a) Of the above claim(s) 48 is/are withdrawn from consideration.
 5) ☒ Claim(s) 1-19, 30-37 and 40-44 is/are allowed.
 6) ☒ Claim(s) 20-29, 38, 39 and 45-47 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) ☐ Notice of Informal Patent Application
 6) ☐ Other: _____.

DETAILED ACTION

Claim Interpretation - 35 USC § 112

1. Claim 1 contains the limitation "means for removing contaminants from the material strips" in "means plus function" form and since it meets the analysis set forth in MPEP 2181, treatment under 35 USC 112, paragraph 6 is given.
2. Regarding claim 45, however the scope of the "means" is inconsistent within the claims. The "means" includes elements of the suction housing independently listed in the claim (ie. top and bottom portions, elongated elements, rounded periphery) thereby describing the "means for removing contaminants". Therefore treatment under 35 USC 112 (6) is not given as the "means" in this claim is similar to the previous "means for producing suction" language.
3. Further note that claims 20-29, 38-39, and 45-47 further define the "means for removing contaminants" therefore failing one of the "prongs" under the analysis in MPEP 2181 and thereby removing themselves from consideration under 35 USC 112(6)).

Election/Restrictions

4. Claim 1 is considered allowable. The restriction requirement as set forth in the Office action mailed on 12/27/05, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 2-18, 30-37, and 40-44, directed to independent subcombinations no longer are withdrawn from consideration because the claim(s)

Art Unit: 3721

requires all the limitations of an allowable claim. However, claim 48, remains withdrawn from consideration because it does not require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Allowable Subject Matter

5. Claims 1-19, 30-37, and 40-44 are allowed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cann et al. (US 5,533,955) in view of Cann et al. (US 5,472,779).

Cann et al. '955 disclose apparatus for forming strips of material comprising shredding mechanism 12; perforated belt conveyor 48; and means 84 for producing suction connected to housing 70 considered to be placed at or beyond a discharge

Art Unit: 3721

position 32 of the belt 48; see figures 1 and 4. Cann et al. '955 does not directly include a means for providing positive air flow other than the suction device 84, however Cann et al. '779 teach a housing comprising upper portion 52 with section 58 for providing for positive airflow above the strips; see figures 1 and 3. It would have been obvious to one of ordinary skill in the art to include the upper suction housing as taught by Cann '779 in the invention to Cann '955 in order to control the positive airflow above the strips. Cann '955 discloses providing a means for supplying positive pressure above the strips; see column 7, lines 5+.

8. Claims 20-27 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cann et al. (US 5,533,955) in view of Campbell, Jr. et al. (US 5,156,075).

Cann et al. does not describe a means for creating a vortex, however Campbell, Jr. teach means for creating a vortex comprising a box 46 with rounded corners 54 and parallel interior elements 48, 50; fan 64; removable cover plate 36; see figures 1 and 2. It would have been obvious to one of ordinary skill in the art to provide the vortex box of Campbell in the invention to Cann et al. for the adequate removal of undesirables. Note that Cann et al. recognize providing positive pressure above the strips; see column 7, lines 5+.

9. Claims 28-29 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cann et al. (US 5,533,955) in view of Campbell, Jr. et al. (US 5,156,075) as applied to claims 20-27 above, and further in view of Ratzel (US 5,906,569).

Art Unit: 3721

The modified invention to Cann et al. does not further provide a suction means for producing suction within the shredding device however Ratzel discloses a similar apparatus for making dunnage strips comprising suction means 58 for producing suction within shredding device 22. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the suction means of Ratzel in the modified invention to Cann et al. in order to remove cutting waste before the further cleaning process. Regarding claims 38-39, Cann teaches spraying means 98 with electrical switching device. Furthermore, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art provide a foot pedal switch because Applicant has not disclosed that such a switch provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any switch because it would activate the spraying operation.

Response to Arguments

10. The amendment of 6/22/07 places many of the claims in condition for allowance as noted above, however note claim 20 and dependents thereof are not treated under 35 USC 112(6) and therefore have been considered more broadly. Note that during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 320,322 (Fed. Cir. 1999). In determining the patentability of claims, the PTO gives claim language its broadest

reasonable interpretation" consistent with the specification and claims. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See MPEP § 904.1.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

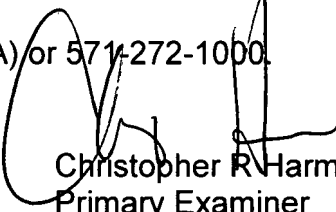
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christopher R. Harmon
Primary Examiner
Art Unit 3721